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OF INTEREST TO HAWAII Board of General Appraisers' Decision.

CONCERNING THE EDWARD MAY

**Duty on Yellow Sheathing Metal
Should Not Have Been
Collected.**

Materials for Ship in Foreign Trade
—Materials admitted to free entry un-
der section 7 or 12, tariff act of 1894 or
1897, respectively, for use in the con-
struction or equipment of a vessel em-
ployed in the foreign trade, do not be-
come dutiable when such vessel makes
a coastwise voyage of more than two
months' duration after the materials
exempted had become worn out, or had
ceased to be serviceable or useful for
the purpose for which they were used.

Worn-Out Metal Sheathing—Where it
is shown that the life of imported met-
al sheathing on a vessel, and its ef-
fectiveness, does not continue longer
than from two and one-half to three
years, duties will not accrue on such
sheathing which has been in use for
more than four years at the time the
vessel undertakes a coastwise voyage,
notwithstanding the owner has allowed
it to remain on the vessel.

In re Spreckels & Bros. Co., 104 Fed.
Rep., 879 (reversing in re Spreckels &
Bros. Co., G. A. 3694), followed.

Before the United States General
Appraisers at New York, April 22, 1901.
In the matter of the protest, 47019b,
of Alexander & Baldwin, against the
decision of the collector of customs at
Honolulu, Hawaii, as to the rate and
amount of duties chargeable on certain
metal sheathing upon the American
bark Edward May.

Opinion by Somerville, General Ap-
praiser.

The material facts in this case are
as follows: "On April 20, 1896, the owner
of the American bark Edward May
withdrew from bonded warehouse at
New York certain yellow sheathing
metal, which was placed upon the hull
of said vessel. The merchandise was
accorded the privileges of section 7 of
the tariff act of 1894, which reads, so
far as applicable, as follows:

"Section 7.—That all materials of for-
eign production which may be neces-
sary for the construction of vessels
built in the United States for foreign
account and ownership or for the pur-
pose of being employed in the foreign
trade, including the trade between the
Atlantic and Pacific ports of the United
States, and all articles necessary for
their outfit and equipment, after the
passage of this Act, may be imported
in bond under such regulations as the
Secretary of the Treasury may pre-
scribe; and upon proof that such ma-
terials have been used for such pur-
poses no duties shall be paid thereon.
But vessels receiving the benefit of this
section shall not be allowed to engage
in the coastwise trade of the United
States more than two months in any
one year except upon the payment to
the United States of the duties of
which a rebate is herein allowed.

Thereafter the vessel was engaged in
the foreign trade for more than four
years. On June 21, 1900, being then in
the port of Honolulu, Hawaii, she ex-
changed her foreign master for coast-
wise enrollment, clearing from Honolu-
lu and continuing in the coastwise
trade for more than two months in the
year 1900. During all this time the
sheathing remained upon the bark's
hull. On her return to Honolulu the
full duties of the yellow metal in ques-
tion, amounting to \$284.20, were exacted
by the collector at that port, under
section 12 of the act of 1897, which was
then in force, said section 12 corre-
sponding exactly to section 7 of the act
of 1894. The protest claims that the
collector's action was unauthorized.

In the case in re Spreckels & Bros.
Co. (104 Fed. Rep., 879), reversing
board decision in re Spreckels & Bros.
Co. (G. A. 3694), the circuit court for
the northern district of California
found, upon the testimony of expert
witnesses, that the life and effective-
ness of the sheathing in this case
does not continue longer than from
two and a half to three years. That
evidence, as set forth in the opinion
of the court, being applicable to the
merchandise before us, is made
part of the record in this case. It is
strongly corroborated by the proofs
which were filed with this protest.

We find accordingly that at the time
the Edward May undertook her coast-
wise voyage, the yellow metal on her
hull was worn out and unfit for fur-
ther use than to be remanufactured.
The Spreckels case cited, supra,
which arose under section 8 of the tar-
iff act of 1890, of which sections 7 of
the act of 1894, and 12 of the present
act were re-enactments in more liberal
terms, involved precisely the question
now before the board. We quote the
following remarks from the opinion:

It could hardly have been intended
by Congress to permanently exclude
from the coastwise trade for ten
months in the year a vessel built in
the United States because it had used
in its construction or equipment, free
of duty, some foreign materials, the
use or life of which was of short dura-
tion. The statute specifically provides
that "upon proof that such materials
have been used for such purpose (con-
struction or equipment) no duties shall
be paid thereon." In what way is this
exemption qualified by the provision
that vessels receiving the benefit of
this section shall not be allowed to
engage in the coastwise trade of the
United States for more than two
months in any one year except upon
payment of the duties?" Suppose an
imported Manila or wire rope has been
completely used up on board of a ves-
sel, must the duties be paid upon such
an article, notwithstanding its destruc-
tion, to secure the privilege of engag-
ing in the coastwise trade for more
than two months in the year? The re-
quirement of duty on imported mate-
rial used in the construction and equip-
ment of a vessel appears to be a reason-
able regulation, if the material con-
tinues to exist in a useful condition.
But if it is worn out, and its life has
gone as a useful or serviceable article,
the payment of the duties does not
appear to be a reasonable requirement

within the spirit and the purpose of
the regulation.

And further:
Is there any warrant for the as-
sumption that Congress intended to
impose a duty upon material after it
had been used and become practically
worthless, simply as a penalty for its
retention upon the vessel? The statute
is silent upon this point, and the in-
ference to be drawn from this silence
is purely a matter of construction, to be
determined by the general spirit and
intent of the statute. As it is not to
be presumed that an injustice was
within the legislative intent, wherever
a statute is capable of two construc-
tions, one of which would work man-
ifold injustice, and the other would
work no injustice, it is the duty of the
courts to adopt the latter. (Lau Ow
Bew vs. United States, 144 U. S., 47, 59;
12 Sup. Ct. 517, 36 L. ed. 340, and cases
cited.) In accordance with these prin-
ciples, the court will consider that the
section in controversy applies only to
material that is useful for the purpose
for which it is intended to be used.

It was judged accordingly that a
shipowner was entitled to the cancel-
lation of duties on yellow sheathing
metal which had been in use more than
four years, notwithstanding he had al-
lowed it to remain on the vessel and
accepted the consequent lower rating.
The merchandise seems also to be en-
titled to exemption from duty under
section 8 of the tariff act of 1894, which
reads as follows:

Section 8.—That all articles of foreign
production needed for the repair of
American vessels engaged in foreign
trade, including the trade between the
Atlantic and Pacific ports of the United
States, may be withdrawn from
bonded warehouses free of duty, under
such regulations as the Secretary of
the Treasury may prescribe.

Following the authority cited, the
protest is sustained and the collector's
decision reversed, with instructions to
reliquidate the entry accordingly.

HONOLULU TALKS ABOUT SECURITIES

"The bulk of paying properties in the
Hawaiian Islands is owned by Ameri-
cans, perhaps as much as four-fifths,"
said a Honolulu man en route to Eng-
land, the other day. "Money is tight
there, because of the great demand for it
in developing numerous new enterprises.
I know of a party of Englishmen who
were passing through Honolulu recently
and invested \$10,000. They will probably
send more money there before long. Su-
gar is not bringing the fancy prices of
last year, but there is still a good mar-
gin of profit in its culture. Some of the
opportunities for investment are very
good, but their value does not seem to
be appreciated in this country. For in-
stance, the bonds of the Oahu railroad,
paying an interest of 6 per cent, do not
begin to sell for the premium they
would command under similar cir-
cumstances in the United States. The road
is a very profitable property, and its
warehouses and terminals alone would
sell for the amount of bonds issued. The
same thing is true of other well-es-
tablished enterprises in the islands that I
might mention. But with the exploita-
tion of Hawaiian securities, I look for
a change for the better in this regard."
—Kansas City Journal.

ASCENSION DAY.

To Be Observed Thursday Morning
by Second Congregation.

There will be a celebration of holy
communion at 5:30 o'clock on Thursday
morning for the Second Congregation of
St. Andrew's Cathedral.

During this month the great festivals
of the church will fall—Ascension Day
on the 16th and Whitsunday on the 26th.
The observance of Ascension Day is the
assertion of all believers in that article
of their faith—"I believe that Jesus
Christ ascended into Heaven and sitteth
at the right hand of God the Father Al-
mighty." Coming as it does on Thurs-
day, the public celebration is left to the
very few. Holy Thursday, as this day is
sometimes called, was almost forgotten
for many years, but after its revival,
there seemed hopes that its observance
would become general, but in many
places we fear it has fallen off again.
In England the custom of the children
of the schools beating the bounds of the
parish on this day is still continued.
Whitsunday or Pentecost is the Festi-
val of the Holy Ghost. This is the ac-
tual birthday of the Church of Christ,
and should be observed with every mark
of faith and devotion and joy in be-
lieving.

Consolation for a Widow.

MANILA, April 20.—The widow of the
murdered Captain Lara of the native po-
lice, who was assassinated last year, has
been granted the sole privilege to run a
cockpit in Manila as a remuneration for
her unfortunate bereavement. This does
not appear to be much, but it really
amounts to a great deal, as the income
of a cockpit annually is not a small fig-
ure. An ordinary cockpit brings its owner
a profit of \$500 or 10,000 pesos a year.
In this case, however, Mrs. Lara has a
monopoly, as no other pit is allowed to
run, and her income will be considerable
in consequence.

Avoid colds by drinking "Kentucky
Favorite" whisky. Spruance, Stanley
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It is pure and old.
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